welfare and best interests of the child paramount to the claims of either parent. Schouler, Dom. Rel. § 248; Hurd, Habeas Corpus, 462–520. Moreover, from the very nature of such determinations there is a full hearing and the rights of all parties are squarely adjudicated. See Tyler, Infants and Coverture, § 187. A more closely analogous series of decisions is that upholding statutes which authorize a summary commitment to State institutions of homeless, dependent or neglected children, the courts expressly declaring however that the rights of parents are not bound by a commitment to which they are not parties, *Milwaukee Industrial School* v. *County* (1876) 40 Wis. 328; *Farnham* v. *Pierce* (Mass. 1886) 55 Am. Rep. 452, note, although after commitment the courts have refused to restore a child to a parent where the child's welfare is not to be secured thereby. *House of Refuge* v. *Ryan* (1881) 37 Oh. St. 197; *State* v. *Kilvington* (1898) 100 Tenn. 227. These inherent legal and natural rights of the parents, which have been recognized as underlying all phases of legal control over the custody of children, *In re Stittgen* (1901) 110 Wis. 625, 630, are merely afforded the protection of due process of law by the principal case in requiring that before a child can be taken from the parent's custody it must be shown that the parent is so unfit or inefficient that the welfare of the child demands an exercise of the State's parental control. The result seems in harmony with the nature of the proceedings in the juvenile court, cf. *In re Benson*, supra, and the tendency of the law to compel parents to perform, as far as possible, their duties to their children, the State displacing them only in extreme cases.

THE RIGHT OF A GOVERNOR TO SUE.—Prior to the appointment of the first regular attorney-general by Edward IV in the year 1462, Dugdale, Orig. Jur., Chronica Series, p. 67, the interests of the king were protected by attorneys specially appointed for the occasion. Id. pp. 19–65. While Coke says this officer's patent continues during good behaviour, it is evident from the form of the patent that the king is the sole and unrestrained arbiter of its continuation. Pulling on Attorneys, p. 18, *f.* Moreover, the Crown's interests, other than those of property, were frequently represented by other attorneys, as the King's Coroner and Attorney in the Court of King's Bench, 4 Bl. Com. 308, 309, the King's Premier Serjeant, the King's Ancient Serjeant and the King's Advocate General. See 5 Edw. III, c. 13 (5); *Attorney-general* v. *Norstedt* (1816) 3 Price 97, 108. It thus appears that the Attorney-general of England was in theory the crown's lawyer and subject to his principal, though he was the proper party to suits affecting the king's property interests, *Reeve* v. *Attorney-general* (1741) 2 Atk. 223; *Hovenden* v. *Lord Annesley* (1805) 2 Sch. & Lef. 607, and although, because of the general obsession of the Crown's power, his action is probably now never actually controlled by the king.

The attorneys-general of our various States, as the successors of the attorney-general of England, *People* v. *Miner* (N. Y. 1868) 2 Lans. 396, occupy an analogous position as the legal representa-

tives of the States, *State* v. *Stark* (S. C. 1812) 3 Brev. 101 ; *State* v. *Lord* (1896) 28 Ore. 498, which can therefore, in theory at least, appoint other attorneys to protect their interests when the general attorney appears to fail in his duty. But is there any actual agency through which one of our States can seek legal assistance other than that of its general attorney, or in the change from crown to State service has the former lawyer of the king become such a portion of the entity of the State that he alone can determine when legal service is necessary? One court has answered this question by holding that any public officer may employ counsel to sue for the State in any matter over which he has control. *State* v. *Bradish* (1861) 34 Vt. 419. But a recent Mississippi case decides that the Governor of that State has no such power under a general constitutional clause requiring him to see that the laws are duly enforced. *Henry* v. *State* (1906) 39 So. 856.

This case states that the governor is unknown to the common law, and, as a constitutional creation, has only such power as is expressly conferred upon him by that instrument. An opposite extreme is reached in the case of *People* v. *Morton* (1898) 156 N. Y. 136, 144, which holds that the governor succeeds to the common law position of the king except as to such powers as are granted to the legislature or the judiciary. The true position is probably between these extremes. It is evident that the governor is regarded as the chief trustee of the interests of the State and one who represents to a large extent its sovereign dignity. Thus the proper method of instituting suit against a state is by service upon the governor and the attorney-general, *Grayson* v. *Virginia* (1796) 3 Dall. 320, the latter officer, in the opinion of Attorney-general Randolph, being joined as a matter of curtesy. This, on the ground that suit by or against the governor as chief executive is suit by or against the State, *Governor of Georgia* v. *Madrazo* (1828) 1 Pet. 110, has been upheld in domestic suits also. *Commonwealth* v. *Railroad Co.* (Mass. 1849) 3 Cush. 25. Upon the same theory a similar extension might well be put upon the rule that when the interests of the State are concerned the governor may bring suit against other States or their citizens. *In Matter of Comm. of Kentucky* (1860) 24 How. 66; *Texas* v. *White* (1868) 7 Wall. 700. The chief duty of the governor is a general one to see that the laws are faithfully executed. This duty he must perform according to constitutional methods, and when his lawful administrative orders are disobeyed he must enforce them through the courts. *In re Commissioners* (1894) 19 Colo. 482. In any state where, as in Mississippi, the attorney-general is largely independent of the governor's control, the latter could only perform his duty, when the state's attorney is unwilling to act, by taking the State's cause before the courts through special counsel. The true position is reached in the cases of *State ex rel. Baldwin* v. *Dubuclet* (1875) 27 La. Ann. 29, and *State ex rel. Strauss* v. *Dubuclet* (1873) 25 La Ann. 161, the former repudiating any right to control the attorney-general's action in his conduct of a suit, and the latter asserting the governor's right to

institute legal proceedings in behalf of the State through special counsel. If our governors have not such power they are mere dignitaries, without the means of performing their first duty—that of seeing that the laws are faithfully executed.

INTERFERENCE WITH THE COMFORTABLE ENJOYMENT OF PROPERTY AS A NUISANCE.—By the law of England one who is injured in the comfortable enjoyment of his property by a continuing nuisance for which damages may be recovered at law is entitled to an injunction in a court of equity as a matter of absolute right. *Crump* v. *Lambert* (1867) L. R. 3 Eq. 409, 412. But in determining the existence of such a nuisance the relative rights of the parties are examined, due regard being had to all the circumstances of time and place. *St. Helena Smelting Co.* v. *Tipping* (1865) 11 H. L. C. 642. This doctrine has perhaps its greatest extension in the immunity enjoyed by noisy trades when conducted in trade communities. The rights here enjoyed are natural rights, not measured by prescriptive user, but allowing a natural growth by the adoption of new inventions in machinery and method. Otherwise, useful trades would be as effectively destroyed by modern competition as by injunction in the first instance. These rights are not, however, unlimited. Even in a trade community an extraordinary use of property may constitute a nuisance, and when the nuisance is established an injunction may issue. The foregoing principles are recognized in a recent English case which illustrates the difficulty met with in attempting to apply them. The plaintiff lived in a district devoted to the printing trade. In the house adjoining the defendant established a printing machine of improved pattern less noisy than most machines. It was operated at night when necessary as were other machines in the neighborhood. The trial judge found that the night work of the defendant's machine caused serious disturbance to the plaintiff, and held it to be a legal nuisance entitling him to an injunction. The upper court, though questioning the existence of a nuisance under the facts, refused to set aside the injunction. *Rushmer* v. *Polsue & Alfieri* (1906) 1 Ch. 234.

From this decision is manifest the injustice that must result one way or the other in attempting to apply absolute remedies to relative rights. By the English rule a plaintiff must make out a case entitling him to the severe remedy of an injunction before he can get any relief against a continuing nuisance. Realizing the inequity of this when applied to a situation involving valuable, conflicting rights Parliament passed Lord Cairns' Act (21 & 22 Vict. c. 27) conferring upon the court of chancery jurisdiction which it had not before to award damages in lieu of an injunction. But with strange conservatism the courts have refused to exercise the discretionary power thus conferred, and have continued to administer equitable remedies according to settled principles. *Shelfer* v. *London Elec. Lighting Co.* (1895) 1 Ch. 287.

Similar strictness is employed in America in cases where property has been damaged or destroyed. But as regards interference